THE HONOURABLE SRI JUSTICE P. NAVEEN RAO

CIVIL MISCELLENEOUS APPEAL NO. 3059 OF 2002

DATE:14-06-2013

BETWEEN:

Kakam John ….Appellant

Vs.

M/s. Chidananda Stone Crushers and another

…. Respondents

Counsel for the Appellant :-- Sri A Vishnuvardhana Reddy

Counsel for the respondent No.1 :--

Counsel for the Respondent No.2: Smt M Seetha Devi

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CIVIL MISCELLENEOUS APPEAL NO. 3059 OF 2002

JUDGMENT :

This Civil Miscellaneous Appeal is filed challenging the order in W.C. No. 26 of 1998 on the file of the Commissioner for Workmens Compensation and Assistant Commissioner of Labour at Karimnagar (for short the Commissioner) dated 12.02.2002.

2. The parties are referred to as described in the Workmen Compensation case.

3. The applicant was working as Labourer in the Opposite Party No.1 company. While he was on duty with the crushing machine of the Opposite Party No.1, on 13.5.1997 he met with an accident as crusher was operated negligently and workman lost his right hand upto shoulder joint. Since no compensation was paid, the workman instituted W.C. No. 26 of 1998 before the Commissioner claiming a compensation of Rs.3,50,000/- with costs and interest @ 18 % per annum from the date of application till date of realisation. In his application, applicant claimed that he was paid Rs.2,000/- per month and was aged about 19 years when the accident took place; that his right hand was amputated and in view of the same, he suffered permanent disability; that he cannot perform normal work which he was earlier doing to eke-out a living.

4. Based on the evidence on record, the Commissioner held that the applicant was a workman and accident occurred during the course of his employment. The Commissioner recorded that the injury sustained by the applicant was during the course of his employment and resulted in loss of his right hand below shoulder joint leaving a stump less than 20.32 Cms from tip of acromion. The Commissioner found the disability suffered by the applicant as 80 % and same is treated as loss of earning capacity. For the purpose of arriving at compensation payable to the applicant, the age of the applicant was assessed as 19 years and wages at

Rs.1,216.80 Ps per month, though the applicant claimed that he was paid wage of Rs.2,000/- per month. Accordingly, the Commissioner has determined the compensation payable to applicant as Rs.1,31,542/-, awarded Rs.74,979/- as interest @ 12 % from 13.5.1997 to 12.2.2002 and Rs.5,000/- towards costs. Thus, total amount of Rs.2,11,521/- was awarded, not satisfied with the compensation awarded by the Commissioner and seeking enhancement of the compensation, the applicant filed this appeal.

5. The learned counsel for applicant contends that the nature of injuries suffered by applicant amounts to 90% permanent disability as per the relevant entry in schedule I appended to the Act, and therefore applicant is entitled to higher compensation. It is further contended that the wages determined by the Commissioner are wholly inadequate and Commissioner erred in not considering the declaration given by applicant that he was paid Rs.2,000/- per month as wages. It is thus contended that the compensation awarded by the Commissioner is not just compensation and is not sufficient in view of the injuries suffered by the applicant and prayed for enhancement of compensation.

6. Learned counsel representing the second respondent-insurance company, supported the award passed by the Commissioner.

7. The only issue that arises for consideration is whether Commissioner erred in arriving at the quantum of compensation payable to the applicant?

8. The record discloses that to arrive at the quantum of compensation, the Commissioner fixed the wage of applicant as Rs.1,216.80 per month and the loss of earning capacity as 80%. He has assigned cogent reasons in support of his decision. The bone of contention of the applicant is that Commissioner ought to have taken the wages drawn by him as Rs.2000/- per month and the loss of earning capacity at 90%.

9. As evident from the record, the applicant lost his right shoulder joint leaving a stump of less than 20.32 Cms from tip of acromion, which is a scheduled injury as incorporated at Serial No.2 in Table in Part II of Schedule I appended to The Employees Compensation Act, 1923 and the same

determines the compensation. The injury suffered by the applicant and amount that can be determined is governed by Section 4 (1) (c) (i). The relevant provision reads as under:

"(c) Where permanent partial disablement results from the injury

(i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury,..

(ii) …."

Schedule I –Part II List of injuries deemed to result in permanent partial disablement – Amputation cases – Upper Limbs (Either Arm)

Serial No.	Description of injury	% of loss of earning capacity
	Amputation through shoulder joint	90
	Amputation below shoulder with stump less than 20.32 cms from tip of acromion	80

10. The injury suffered by applicant as certified by the Medical Officer is amputation below shoulder with stump less than 20.32 Cms from tip of acromion, which is prescribed in the Schedule I extracted above. As per the relevant entry in Schedule –I for such injury the percentage of loss of earning capacity is 80 %. In view of the statutory mandate, the Commissioner has determined the loss of earning capacity of the applicant as 80 %. The applicant claimed that he was paid wages of Rs.2,000/- per month, whereas, R.W.1 in his deposition stated that the applicant was paid Rs.900/- per month towards wages. There was no documentary proof filed by the applicant before the Commissioner in support of his claim that he was paid wages of Rs.2,000/- per month. Thus, to arrive at just compensation, the Commissioner considered the wages determined by the Government from time to time to the nature of employment undertaken by the applicant in accordance with the provisions of the Minimum Wages Act, 1948, in respect o f mazdoor working at Crushing Machines in the employment of stone

breaking and stone crushing operations and arrived at the wage that is payable to applicant as Rs.1,216.80 ps. Even now the applicant has not placed on record any evidence to show that he was paid higher wages than the wages determined by the Commissioner.

11. I see no error in the decision of the Commissioner in determining the wages paid to the applicant and the loss of earning capacity for arriving at the just compensation warranting interference by this Court. The appellant/applicant has not made out any case for interference.

Hence, the appeal is dismissed. No costs.

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P.NAVEEN RAO,J

DATE:14.06.2013
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